IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP NO.6051 OF 2006
DATE OF DECISION: 17.04.2007

Suman Lata w/o Sh. Sukhbir Singh, Hindi Teacher, Govt. Girls Senior Secondary School, Pharal, Tehsil and District Kaithal (Haryana).

.....PETITIONER

VERSUS

1. The State of Haryana through its Secretary Education Department, Haryana, Civil Secretariat, Chandigarh.
2. The Director General of School Education Haryana, 30 Bays Building, Sector-17, Chandigarh.
3. District Education Officer, Kaithal.

.....RESPONDENTS

CORAM:- **HON'BLE MR.JUSTICE ASHUTOSH MOHUNTA**
HON'BLE MR.JUSTICE R S MADAN

PRESENT: Mr.RK Malik, Advocate
for the petitioner.

Dr.Anmol Rattan Sidhu, Additional Advocate General, Haryana with Mr. Deepak Jindal, Assistant Advocate General, Haryana.

R S MADAN, J.

In pursuance to the 860 posts of Hindi Teachers advertised by the Director, Secondary Education, Haryana, the petitioner, who belong to SC-A category applied for the said post on 14-11-1999. The result was declared and the petitioner was selected on 16-10-2000. On 1-12-2000, the petitioner was offered the appointment letter and she joined

as Hindi Teacher on 13-12-2000. It was to her utter surprise when on 8-10-2001, the appointment of the petitioner was cancelled and her services were terminated vide order dated 8-10-2001 (Annexure P-1) and she was relieved on 23-10-2001. The said order of termination was challenged by the petitioner before the Hon'ble High Court and the same was quashed on 2-4-2002 on the ground that the order of termination was passed without observing the principle of natural justice and the respondents were directed to pass an appropriate speaking order afresh after affording an opportunity of hearing to the petitioner. The petitioner was called for personal hearing. On 6-6-2002, she filed written representation alleging therein that no show cause notice was issued to her nor any reason has been recorded on the basis of which action was taken against her. The Director Secondary Education Haryana, respondent No.2 vide order dated 20-6-2002 (Annexure P-4) declared that termination order dated 8-10-2001 (Annexure P-1) was in order. The said order was challenged before the Hon'ble High Court and on 30-1-2003, the said petition was allowed vide Annexure P5. The State of Haryana preferred the SLP before the Supreme Court which was dismissed on 29-04-2005, copy of which is Annexure P6.

Despite of the petitioner having waited for a long time that the order of the High Court which was subsequently affirmed by the Supreme Court might be implemented but the same was not implemented, which led to the filing of the contempt petition. Consequently, the petitioner was reinstated vide letter dated 3-8-2005 (Annexure P7). The petitioner, however, through this writ petition claimed that due to the illegal action on the part of the respondents, she has been deprived of the salary from 24-10-2001 to 3-8-2005 to which she was otherwise entitled.

In the written statement filed on behalf of the respondents, it has been categorically admitted that at the time of re-appointment of the petitioner in service, it was incorporated in her appointment letter that she would be entitled continuity of service for purposes of seniority and increments from the date of termination i.e. 8-10-2001 to the date of rejoining i.e. 3-8-2005 but she would not be entitled to any salary on the principle of 'no work no pay'. It was, however, denied that due to the action of the respondent, she remained out of service. The petitioner, is however, not entitled to any salary from 8-10-2001 to the date of rejoining, as she remained out of service being lower in merit and stood in waiting list at Sr.No.5 in SC-A category. The respondents thus prayed for the dismissal of the writ petition.

We have heard the learned counsel for the parties.

The facts in the instant case are not disputed between the parties. The only contention which has been raised before us is as to whether the petitioner is entitled to the salary of the period during which she remained out of service i.e. from 8-10-2001 to 3-8-2005

Learned counsel for the petitioner contended that once the order of termination has been set aside as illegal and the said order was upheld by the Hon'ble Supreme Court, as consequence of this, the petitioner was entitled to full salary. The petitioner was kept out of job due to the arbitrary act of the respondents. The petitioner referred to the Full Bench judgment of this Court titled as **Radha Ram** Vs. **Municipal Committee Barnala and another** reported as 1983 PLR 21 where the Hon'ble Full Bench has observed as under:

" That once the relief of setting aside or quashing the

> *order of termination has been granted, or a declaratory decree has been passed to the similar effect, it necessarily follows that the employee in the eye of law continues to be in service and as a necessary consequence thereof would be entitled to all emoluments flowing from that status. He must be deemed to be in a position identical with that existing prior to the passing of the order of termination of his service. The emoluments of the post are a logical consequence of setting aside the order of termination."*

Thus in view of the law laid down by the Full Bench, the petitioner is entitled to the salary for the period during which she was kept out of job from 24-10-2001 to 3-8-2005.

On the other hand, it was argued on behalf of the respondents that the petitioner has been rightly denied the salary for the period for which she remained out of job on the principle of 'no work no pay'.

After hearing the learned counsel for the parties, we are of the view that the case of the petitioner is fully covered by the Full Bench judgment of **Radha Ram's case (supra)** and once the order of termination is set aside by observing that the order is illegal, arbitrary and has been passed against the principle of natural justice, the consequence of which was that she is entitled to the salary for the period from 24-10-2001 to 3-8-2005. The petitioner has filed an affidavit to the effect that she was kept compulsorily out of job, during this period, she had not taken any job or employment with any institution.

We thus quash the impugned order Annexure P7 and accept the writ petition to the extent that the petitioner is entitled for the salary for the period from 24-10-2001 to 3-8-2005 due to the arbitrary act of the respondents. We hereby direct the respondents to pay the arrears of salary as well as grant the benefits of service, to which the petitioner is entitled.

(R S MADAN)
JUDGE

(ASHUTOSH MOHUNTA)
JUDGE

April 17, 2007
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